



11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030 Phone (703) 934-6101 Fax (703) 352-3678

fff@fff.org www.fff.org

The Post-9/11 Roundup of Innocents, Part 2

by James Bovard

In the weeks after the 9/11 attacks, the Bush administration constantly misrepresented how much power it was seeking over aliens. In a September 25 speech to FBI agents, Bush declared, “We’re asking Congress for the authority to hold suspected terrorists who are in the process of being deported until they’re deported.... We believe it’s a necessary tool to make America a safe place. This would, of course, be closely supervised by an immigration judge.” But everything that Bush and Ashcroft subsequently did sought to minimize, if not obliterate, judicial supervision of their roundup.

On September 30, Attorney General John Ashcroft announced on CNN, “We’ve arrested and detained almost 500 people since the September 11 terrorist attacks.... We seek to hold them as *suspected terrorists*, while their cases are being processed on other grounds.”

But early on, it was obvious that many of the people being nabbed were innocuous. Human Rights Watch reported the following cases:

- “Upon arriving at the Newark, New Jersey, train station on October 11, 2001, Osama Sewilam asked a policeman for directions to his immigration attorney’s office. The policeman asked him where he was from, and he replied, ‘Egypt.’ The policeman asked him if he had a visa. He said it had expired and that was why he was going to see his lawyer. The policeman took him to the police station and called the FBI. Sewilam was deported on March 15, 2002.”
- “Ansar Mahmood, a twenty-four-year-old Pakistani who was a legal permanent resident in the United States, decided to have his picture taken on October 9, 2001, to send to his family, according to a newspaper report. After work, he drove to the highest point in Hudson, New York, a hilltop overlooking the Catskills Mountains, but the view also included the main water treatment plant for the town. Two guards had been posted there that day because of the anthrax scare. While one of the guards took Mahmood’s picture, the other called the police. The FBI’s

investigation of Mahmood uncovered that he had helped an undocumented friend from Pakistan find an apartment and he was charged with harboring an illegal immigrant.”

Allegations began popping up that post-9/11 detainees were being beaten or prevented from contacting a lawyer. Ashcroft announced on October 16, “I would be happy to hear from individuals if there are any alleged abuses of individuals, because that is not the way we do business.” He promised that “we will respect the constitutional rights and we will respect the dignity of individuals.” But the fact that many detainees were held incommunicado made it tricky for them to personally contact the attorney general.

The FBI had a form affidavit it presented to judges to justify indefinite secret confinement of targeted aliens. In scores, if not hundreds, of cases, the FBI warned,

At the present stage of this vast investigation, the FBI is gathering and culling information that may corroborate or diminish our current suspicions of the individuals that have been detained.... In the meantime, the FBI has been unable to rule out the possibility that [the detainee] is somehow linked to, or possesses knowledge of the terrorist attacks on the World Trade Center and the Pentagon. To protect the public, the FBI must exhaust all avenues of investigation while ensuring that critical information does not evaporate pending further investigation.

The FBI declared that “the business of counter-terrorism intelligence gathering in the United States is akin to the construction of a *mosaic*.... The FBI is gathering and processing thousands of bits and pieces of information, however, to see if it can be fit into a picture that will reveal how the unseen whole operates.”

The FBI implied that mere mortals could not even hope to grasp the meaning of the details agents were sniffing out: “What may seem trivial to some may appear of great moment to those within the FBI or the intelligence community.” The “mosaic” form affidavit pushed the hottest button to intimidate judges — the same tactic Ashcroft successfully used on Congress to railroad through the USA PATRIOT Act. The FBI’s constant invocation of the need to build “mosaics” is ironic in light of a 2002 joint congressional investigation’s conclusions about the FBI’s analytical incompetence.

National security and power

Ashcroft portrayed arbitrary power as the key to national survival. On October 25, he told the U.S. Conference of Mayors,

Today's terrorists enjoy the benefits of our free society even as they commit themselves to our destruction.... If you violate a local law, you will be put in jail and kept in custody *as long as possible*. *We will use every available statute. We will seek every prosecutorial advantage.*

In Ashcroft's view, any breach of any law or regulation automatically entitles the government to absolute power over the suspected violator. This "maximum prosecution mentality" is far more dangerous now than it was in earlier decades. There are far more levers for government to use against those it seeks to destroy.

The following day, Bush signed the PATRIOT Act, which gave Bush and Ashcroft almost everything they wanted — except for formally suspending habeas corpus. The law increased the length of time that an alien could be locked up without charges to seven days. If the attorney general certifies that he has "reasonable grounds to believe that the alien is engaged in any activity that endangers the national security of the United States," the detention can be extended almost indefinitely. No evidence is required: the attorney general's rote assertion is sufficient.

Shortly after the president signed the USA PATRIOT Act the Justice Department announced that it could henceforth eavesdrop on telephone calls and meetings between anyone detained in a terrorist investigation and his lawyers. A Federal Register notice stated that the monitoring would be carried out whenever the attorney general certified "that reasonable suspicion exists to believe that an inmate may use communications with attorneys or their agents to facilitate acts of terrorism." Since it required no evidence for the feds to label someone a terrorist threat, it would presumably require scant suspicion to justify pervasive eavesdropping. Sen. Patrick Leahy, chairman of the Senate Judiciary Committee, complained in a letter to Ashcroft that there are "few safeguards to liberty that are more fundamental than the Sixth Amendment. When the detainee's legal adversary — the government that seeks to deprive him of his liberty — listens in on his communications with his attorney, that fundamental right and the adversary process that depends upon it are profoundly compromised."

Roundups and detentions

The Bush administration sought to allay rumors of mass roundups of Muslim men. On November 5, 2001, White House spokesman Ari Fleischer announced, "Most of the people, the overwhelming number of the people, were detained, they were questioned, and then they've been released." Fleischer added that President Bush "is fully satisfied that anybody who is continuing to be held is being held for a wise reason." But a Justice

Department spokesman contradicted the White House, declaring on the same day that most of the people rounded up after 9/11 were still held by the government.

The Justice Department responded to the imbroglio by announcing it would cease disclosing the total number of people locked up in the 9/11 investigation. As *Time* noted, “Ashcroft spokeswoman Mindy Tucker said the department would no longer issue daily or even weekly updates [of the number of detainees], because the task of making and synchronizing lists was too labor intensive.” Assistant Attorney General Michael Chertoff later said that the feds ceased giving out updated totals of detainees because it “loses meaning.” The media widely reported statements by senior federal officials that 1,200 suspects had been detained in the 9/11 investigations.

At a November 27 Washington press conference Ashcroft announced, “We’re removing suspected terrorists ... from our streets to prevent further terrorist attacks.” He declared that, thanks in part to “arrests and detentions, we have avoided further major terrorist attacks, and we’ve avoided these further major terrorist attacks despite threats and videotape tauntings.” Videotape tauntings were, in Ashcroft’s mind, almost as dangerous as a hijacked jetliner.

Ashcroft derided suggestions to release the names of detainees: “I am not interested in providing, when we are at war, a list to Osama bin Laden, the al-Qaeda network, of the people that we have detained that would make in any way easier their effort to kill American citizens — innocent Americans.” He denied that any of detainees’ rights had been violated: “The Justice Department will not sacrifice the ultimate good to fight the immediate evil.”

Ashcroft proclaimed that it is “simply not true” that “detainees are not able to be represented by an attorney or to contact their families.” He sounded deeply hurt by the scurrilous attacks on the Justice Department: “I would hope that those who make allegations about something as serious as a violation of an individual’s civil rights would not do so lightly or without specificity or without facts. This does a disservice to our entire justice system.”

Ashcroft bragged at the press conference that 104 people had been charged with crimes as a result of the post-9/11 investigation. One of those honorees was François Guagani, a French citizen who was caught as he was crossing the border on a bus into Maine on September 12. Guagani was arrested because he was entering the United States after having been deported for previously violating his immigration status. Because he had box-cutters in his luggage (he worked as a carpenter), he was included on the list of people formally charged by the Justice Department in the terrorism investigation. (He was sentenced to 20 months in prison.)

None of the other criminal charges that Ashcroft invoked had any link to the 9/11 attacks. The charges were a smorgasbord of credit-card fraud, false statements to federal officials, immigration violations, theft, and so on.

On December 6, 2001, Ashcroft testified under oath to the Senate Judiciary Committee regarding his policies on people arrested in the United States as “suspected terrorists.” He denounced his critics:

Charges of “kangaroo courts” and “shredding the Constitution” give new meaning to the term “the fog of war.” Since lives and liberties depend upon clarity, not obfuscation, and reason, not hyperbole, let me take this opportunity today to be clear: Each action taken by the Department of Justice ... is carefully drawn to target a narrow class of individuals — terrorists. Our legal powers are targeted at terrorists. Our investigation is focused on terrorists.

But the mass roundup within the United States after 9/11 never apprehended anyone subsequently officially linked to the 9/11 attacks. An Inspector General report later revealed that many of the detainees had indeed been blocked from contacting attorneys and that some of them had been beaten or otherwise physically abused by guards in federal prisons.

Unfortunately, the follies of the post-9/11 crackdown have been largely forgotten. Thus, there is little chance that “lessons learned” will prevent similar abuses if there is another significant terrorist attack within the United States.

James Bovard is the author of [Attention Deficit Democracy](#) [2006] as well as [The Bush Betrayal](#) [2004], [Lost Rights](#) [1994] and [Terrorism and Tyranny: Trampling Freedom, Justice and Peace to Rid the World of Evil](#) (Palgrave-Macmillan, September 2003) and serves as a policy advisor for The Future of Freedom Foundation.

This article was originally published in the June 2009 edition of Freedom Daily.